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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/145,167	09/01/1998	IRENE HU FERNANDEZ	FERN-P004	5652
22877	7590	11/22/2005	EXAMINER	
FERNANDEZ & ASSOCIATES LLP 1047 EL CAMINO REAL SUITE 201 MENLO PARK, CA 94025			ROBINSON BOYCE, AKIBA K	
			ART UNIT	PAPER NUMBER
			3639	

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/145,167

Applicant(s)

FERNANDEZ ET AL.

Examiner

Akiba K. Robinson-Boyce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. Due to communications filed 8/30/05, the following is a non-final office action. Claims 1-20 have been cancelled. Claims 21-26 have been added. Claims 21-26 have been pending in this application and have been examined on the merits.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/30/05 has been entered.

Claim Objections

3. Claim 22 is objected to because of the following informalities: This claim depends from itself. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 21 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Alexander et al (US 6,177,931).

As per claim 21, Alexander et al discloses:

an interface for receiving a video stream from the network, (Col. 8, line 66-Col. 9, line 1, viewing user's video interface, in this case the video stream is being received by the television in order for the viewer to view visual data on the television through the viewer's interface);

a controller for causing the video stream to be stored in a digital video recorder, such stored video being accessible for play-back using a software search agent, (Col. 12, lines 11-21, EPG records on recordable digital video discs in this case, the digital video recorder [DVR] can only record its data on digital video media such as digital video discs [DVDs], also shows that when viewer is ready to view the DVD recording, the viewer can select to view through the EPG); and

a sensor for generating a real-time signal for transmission via the network interface, (Col. 32, lines 51-54, shows the transmission of a television signal in real time along with the message or advertisement, in this case, the sensor is inherent with Alexander et al since in television, specific types of sensors are needed to produce television signals); the real-time signal enabling such set-top apparatus to be classified in a promotional group for targeted messaging, whereby a promotion video stream is directed to the set-top apparatus adaptively in response to the real-time signal, col. 31 lines 9-14, shows profile program (which collects user profile data) uses autosurfing that

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can be performed during real-time advertising telecasts, therefore, when the advertising is telecast, these advertisement signals are transmitted to the television for the viewer to be profiled, w/col. 29, lines 22-30, shows more support for viewer profile data to be represented on a real-time basis, w/ col. Col. 35, lines 48-50 and lines 53-54, shows collecting viewer profile data and selecting an advertisement is based on the viewer profile data, which represents targeted advertisement, and displaying the selected advertisement on the television screen).

As per claim 24, Alexander et al discloses:

receiving a video stream from via a network interface, (Col. 8, line 66-Col. 9, line 1, viewing user's video interface, in this case the video stream is being received by the television in order for the viewer to view visual data on the television through the viewer's interface);

storing the video stream in a digital video recorder for play-back, such stored video being accessible using a software search agent, (Col. 12, lines 11-21, EPG records on recordable digital video discs in this case, the digital video recorder [DVR] can only record its data on digital video media such as digital video discs [DVDs], also shows that when viewer is ready to view the DVD recording, the viewer can select to view through the EPG); and

generating a sensor signal for transmission via the network interface, the signal enabling set-top classification in a promotional group for targeted messaging, whereby a promotion video stream is directed adaptively in response to the signal, (Col. 32, lines 51-54, shows the transmission of a television signal in real time along with the message

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or advertisement, in this case, the sensor is inherent with Alexander et al since in television, specific types of sensors are needed to produce television signals, w/ col. 31 lines 9-14, shows profile program (which collects user profile data) uses autosurfing that can be performed during real-time advertising telecasts, therefore, when the advertising is telecast, these advertisement signals are transmitted to the television for the viewer to be profiled, w/col. 29, lines 22-30, shows more support for viewer profile data to be represented on a real-time basis, w/ col. Col. 35, lines 48-50 and lines 53-54, shows collecting viewer profile data and selecting an advertisement is based on the viewer profile data, which represents targeted advertisement, and displaying the selected advertisement on the television screen).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al (US 6,177,931) as applied to claim 1 above, and further in view of Peifer et al (US 5,987,519).

As per claim 22, Alexander et al fails to disclose that the sensor comprises a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, but does disclose sensing viewer

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characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Peifer et al discloses:

The sensor comprises a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, (Col. 3, lines 35-46, shows a telemedicine system that obtains medical measurement data from a patient and sends this information over a network such as a Community Access Television (CATV) network, in this case, the sensed DNA or protein data is obvious with the telemedicine data since the telemedicine measurement includes medical measurement data, and sensed DNA or protein data is medical measurement data). Peifer et al discloses this limitation in an analogous art at the time of the applicant's invention to obtain medical measurement data from the patient, and to transmit these measurements over a television network.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have a sensor to comprise a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein with the motivation of using tele-medical applications to target advertisements.

As per claim 25, Alexander et al fails to disclose that the signal is generated by a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, but does disclose sensing viewer

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characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Peifer et al discloses:

the signal is generated by a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, (Col. 3, lines 35-46, shows a telemedicine system that obtains medical measurement data from a patient and sends this information over a network such as a Community Access Television (CATV) network, in this case, the sensed DNA or protein data is obvious with the telemedicine data since the telemedicine measurement includes medical measurement data, and sensed DNA or protein data is medical measurement data). Peifer et al discloses this limitation in an analogous art at the time of the applicant's invention to obtain medical measurement data from the patient, and to transmit these measurements over a television network.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have a sensor to comprise a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein with the motivation of using tele-medical applications to target advertisements.

8. Claims 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al (US 6,177,931) as applied to claim 1 above, and further in view of Hill et al (US 5,857,155).

As per claim 23, Alexander fails to disclose the sensor comprises a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, but does disclose but does disclose sensing viewer characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Hill et al discloses:

the sensor comprises a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, (Col. 2, lines 31-38, shows use of geographic information from a GPS satellite to enhance the efficiency and accuracy of targeted messaging). Hill et al discloses this limitation in an analogous art for the purpose of showing that targeted messaging can result from the input of geographic information.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the sensor to comprise a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location with the motivation of using gps applications to target advertisements.

As per claim 26, Alexander fails to disclose the signal is generated by a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, but does disclose but does disclose sensing viewer characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Hill et al discloses:

the signal is generated by a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, (Col. 2, lines 31-38, shows use of geographic information from a GPS satellite to enhance the efficiency and accuracy of targeted messaging). Hill et al discloses this limitation in an analogous art for the purpose of showing that targeted messaging can result from the input of geographic information.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the sensor to comprise a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location with the motivation of using gps applications to target advertisements.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 571-272-6734. The examiner can normally be reached on Monday-Tuesday 8:30am-5pm, and Wednesday, 8:30 am-12:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7238 [After final communications, labeled "Box AF"], 703-746-7239 [Official Communications], and 703-746-7150 [Informal/Draft Communications, labeled "PROPOSED" or "DRAFT"].

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



A. R. B.
November 16, 2005